

## Transportation Update: Effectively Handling Driver Fatigue Could Save Your Company Millions

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On April 11, 2019, the Court of Appeals of Ohio Eighth Appellate District, in the case *Soberay v. Greyhound Lines, et al.*, affirmed a \$23 million verdict in a personal injury suit against a commercial bus line stemming from a 2013 accident in Pennsylvania. The opinion illustrates the importance of enforcing written policies and procedures.

### A. Background

Mark Soberay ("Soberay") was a Greyhound bus (the "Bus") passenger who lost his right leg below the knee as a result of a serious accident. The Bus struck the rear of a tractor-trailer pulling a load up a mountain. Soberay filed suit in Cuyahoga County Common Pleas Court alleging that Sabrina Anderson ("Anderson"), the Greyhound bus driver, fell asleep while operating the Bus and collided with the rear of a tractor-trailer driven by Akos Gubica ("Gubica"). Plaintiff also alleged that Greyhound negligently failed to enforce its own rules regarding driver fatigue. The case proceeded to a month-long jury trial.

### B. Dispute

Greyhound maintained that Anderson was not at fault because: 1) she suffered a medical emergency; and 2) a reasonable person would not have seen Gubica's truck in time to avoid the collision. Soberay countered that the evidence did not support a medical emergency defense or that Anderson would not have been able to see and perceive the tractor-trailer in time to avoid hitting it had she not been asleep. The jury ruled in Soberay's favor. Greyhound appealed.

### C. Discussion

One of the issues raised on appeal was whether Greyhound could be liable for failing to enforce a voluntary safety rule. In 2003, Greyhound established a fatigue management program for its drivers. Greyhound drivers were trained on the dangers of fatigue when hired and every two years thereafter. Greyhound implemented an internal rule in 2011 that provided:

Designated tire check points, meal and rest stops. It's the driver's responsibility to check the tires at all designated tire check points, meal and rest stops. Abuse of tires will not be tolerated. Drivers are to stop approximately every 150 miles to check tires and walk around the bus for a safety stop at roadside rests.

Greyhound did not require its drivers to follow this rule despite issuing safety bulletins, literature and training videos that emphasized the dangers of fatigue. Anderson testified that this rule was not enforced, she did not follow the rule, and she kept driving even if the next stop was more than 150 miles from her last stop. A former Greyhound scheduler testified that schedulers did not do anything to ensure Greyhound drivers stopped every 150 miles to prevent fatigue.

### ATTORNEYS

W. Brett Mason

### CAPABILITIES

Business Litigation

The Court of Appeals affirmed the judgment in Soberay's favor.

#### D. Why Is This Important?

1. In addition to the \$23 million verdict, Greyhound was also hit with a four million dollar punitive damage award for violating its own voluntary safety rule.
2. A periodic examination of your voluntary safety rules and/or conducting an internal audit to understand how your rules are being implemented and whether they are being enforced could help head off a claim of negligent rule enforcement.
3. Employees working in or with operations (schedulers, dispatchers, human resources, etc.) may not be aware of the possible implications their actions could have on internal safety rules addressing driver fatigue.